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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 391 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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STATE OF GUJARAT

Versus

KANCHANBEN W/O. GOPALBHAI            MEGHABHAI

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Appearance:

MR SR DIVETIA APP for Appellant.

MR MM TIRMIZI FOR PM THAKKAR for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 29/08/98

#### ORAL JUDGEMENT

The State of Gujarat has filed this appeal under Section 377 of the Code of Criminal Procedure,1973, ("Code" for short ), read with Section 11 of the Probation of Offenders Act,1968 ( "the Act" for short), challenging the judgment and order of the learned 3rd Addl. Sessions Judge, Rajkot, in Sessions Case No.17/86, whereby the respondent was held guilty for the offence punishable under Section 314 of IPC and came to be released on probation under Section 4 (1) of the Act.

2. The respondent is a resident of village Jasdan. Her husband appears to be a Vaidya, doing Ayurvedic practice. In the absence of her husband Harilal, she prescribed some medicines to one Pushpaben who wanted abortion with the consent of her husband Harilal Girjashankar Joshi. After taking the medicines given by the respondent, condition of said Pushpaben became serious and she died. The complaint was lodged against the respondent and her son Kishorbhai Gopalbhai. After the investigation, the charge sheet came to be filed against the said Kishorbhai Gopalbhai and respondent

Kanchanben, w/o Gopalbhai Meghajibhai. The charge sheet was numbered as Sessions Case No.17/86.

3. The prosecution examined six witnesses in support of its case. Learned third Addl. Sessions Judge, Rajkot, acquitted the accused No.2 Kishorbhai Gopalbhai and convicted the respondent for the offence punishable under Section 314 of IPC. Respondent being a lady, learned Addl. Sessions Judge, Rajkot, called for the report of Probation Officer, Rajkot. After the receipt of the report of the Probation Officer and after satisfying himself with regard to the antecedents of the respondent, instead of imposing sentence, released the respondent on probation for a period of two years under the supervision of the Probation Officer on her executing a personal bond of Rs.500/(Rupees Five Hundred Only ) and surety of the like amount on condition that during the said period she shall maintain good behaviour.

4. The State of Gujarat has challenged the order of the 3rd Addl. Sessions Judge, Rajkot, by filing this application. Heard learned A.P.P. Mr. S.R.Divetia, for the appellant and learned advocate Mr.M.M.Tirmizi, for learned Senior Advocate Mr.P.M.Thakkar for the respondent. Learned A.P.P. has taken me through the entire evidence produced at the trial and submitted that the discretion exercised by the learned Addl. Sessions Judge, granting probation to the respondent is illegal. The order of granting probation to the respondent requires to be interfered with.

5. The submission of the learned A.P.P. deserve to be rejected. I have carefully gone through the report of the Probation Officer produced before the 3rd Addl. Sessions Judge. In my opinion, there was no criminal antecedents of the respondent and the report shows that the respondent deserves to be released on probation. In view of the report of the Probation Officer and the fact that the respondent is a lady, who was aged about 50 years at the time of the incident, in my opinion, the discretion exercised by the learned Addl. Sessions Judge does not require any interference.

6. For the foregoing reasons, the appeal fails and is dismissed.

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(mithabhai)